

**Publication Date:** January 7, 2010  
**Effective Dates:** January 8, 2010 through January 7, 2011

## **EMERGENCY ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE CREATING A RULE**

**To amend** Ins 3.75 (2) (c) , and create Ins 3.75 (8), Wis. Adm. Code, **relating to** continuation of group health insurance policies.

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### **FINDING OF EMERGENCY**

Under 2009 Act 11, s. 9126, a Finding of Emergency is not required for this emergency rule. The relevant portion of 2009 Act 11 reads as follows:

#### **2009 Wisconsin Act 11, SECTION 9126. Nonstatutory provisions; Insurance.**

(4) CONTINUATION COVERAGE RULES (a) Notwithstanding section 632.897 of the statutes and subsections (1), (2), and (3), the commissioner of insurance may promulgate rules establishing standards requiring insurers to provide continuation of coverage for any individual covered at any time under a group policy who is a state eligible individual to whom subsection (2) or (3) applies or an assistance eligible individual, as defined under section 3001 (a) (3) of the federal act, including rules governing election or extension of election periods, notice, rates, premiums, premium payment, application of preexisting condition exclusions, and election of alternative coverage.

(b) The commissioner may promulgate the rules under paragraph (a) as emergency rules under section 227.24 of the statutes. Notwithstanding section 227.24 (1) (c) of the statutes, emergency rules promulgated under this paragraph may remain in effect for one year and may be extended under section 227.24 (2) of the statutes Notwithstanding section 227.24 (1) (a) and (3) of the statutes, **the commissioner is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.** [Emphasis Added]

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### **ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE (OCI)**

#### **1. Statutes interpreted:**

ss. 600.01, 628.34 (12), Stats.

#### **2. Statutory authority:**

ss. 601.41 (3), 601.42, 632.897, Stats., s. 9126 of 2009 Wisconsin Act 11 and the American Recovery and Reinvestment Act of 2009, P.L. 111-5

#### **3. Explanation of OCI's authority to promulgate the proposed rule under these statutes:**

2009 Act 11 specifically permits the commissioner to enact this rule.

#### **4. Related statutes or rules:**

ss. 632.746 & 632.897, Stats.

#### **5. The plain language analysis and summary of the proposed rule:**

In December 2009 Congress enacted section 1010 of the federal department of defense appropriations act, 2010 ("DOD Act"). This section extended the federal premium subsidy provided under the American Recovery and Reinvestment Act of 2009, provided for retroactive extension of coverage for a transition period, and required that notice of the extended subsidy and retroactive coverage and premium payment be given to assistance eligible individuals. This rule makes it clear that these rights must also be extended to assistance eligible individuals who are or were eligible for coverage under state law, either under s. 632.897, Stats., or s. INS 3.75, Wisconsin Administrative Code. These rights include the following:

- (a) The DOD Act extended the federal premium reduction eligibility period for two months until February 28, 2010 and increased the maximum period for receiving the subsidy for an additional six months (from nine to 15 months).
- (b) Individuals who had reached the end of the federal reduced premium period before the DOD Act extended it to 15 months will have an extension of their grace period to pay the reduced premium. To continue their coverage they must pay the 35 percent of premium costs by February 17, 2010, or, if later, 30 days after they receive notice of the extension.
- (c) Individuals who ended the federal reduced premium subsidy and paid the full premium may obtain a credit for future months of coverage or a reimbursement of the overpayment.
- (d) Individuals who are assistance eligible individuals on or after October 31, 2009 or who experience a qualifying event on or after that date are entitled to notice, or additional notice, of the extended federal premium subsidy.
- (e) Individuals who are entitled to an extended premium grace period as described in paragraph (b), or a credit or refund for premium paid as described in paragraph (c), are entitled to notice of those rights.

**6. Summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

The proposed rule parallels the standards enacted by the DOD Act and makes it clear they are applicable to assistance eligible individuals who are or were entitled to coverage under s. 632.897, Stats., or s. INS 3.75, Wis. Adm. Code.

**7. Comparison of similar rules in adjacent states as found by OCI:**

**Illinois:** None

**Iowa:** None

**Michigan:** None

**Minnesota:** None

**8. A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule:**

This proposed rule is based on, and parallels the DOD Act.

**9. Any analysis and supporting documentation that OCI used in support of OCI's determination of the rule's effect on small businesses under s. 227.114:**

The rule imposes no substantial requirements on small employers but would allow discontinued employees of small employer who have group insurance the ability to elect continuation of health insurance coverage.

**10. See the attached Private Sector Fiscal Analysis.**

**11. A description of the Effect on Small Business:**

This rule will have little or no negative effect on small businesses.

**12. Agency contact person:**

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the Web site at: <http://oci.wi.gov/ocirules.htm>

or by contacting Inger Williams, OCI Services Section, at:

Phone: (608) 264-8110  
Email: [inger.williams@wisconsin.gov](mailto:inger.williams@wisconsin.gov)  
Address: 125 South Webster St – 2<sup>nd</sup> Floor, Madison WI 53703-3474  
Mail: PO Box 7873, Madison, WI 53707-7873

**13. Place where comments are to be submitted and deadline for submission:**

The deadline for submitting comments is 4:00 p.m. on the 14<sup>th</sup> day after the date for the hearing stated in the Notice of Hearing.

Mailing address:

Robert Luck  
Legal Unit - OCI Rule Comment for Rule Ins 375  
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**The proposed rule changes are:**

**SECTION 1. Ins 3.75 (2) (c) is amended to read:**

**Ins 3.75 (2) (c)** "Federal act" means the American Recovery and Reinvestment Act of 2009, P.L. 111-5, as amended by section 1010 of the federal department of defense appropriations act, 2010 (H.R. 3326), .

**SECTION 2. INS 3.75 (8) is created to read:**

**Ins 3.75 (8)** EXTENDED PREMIUM PAYMENT RIGHT, COVERAGE, AND NOTICE PURSUANT TO SECTION 1010 OF THE FEDERAL DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2010. An insurer shall provide the rights provided by, and shall comply with the provisions of, section 1010 (c) of the federal department of defense appropriation act, 2010 (H.R. 3326), for assistance eligible individuals for who are or were eligible for coverage under this section or s. 632.897, Stats., including:

(a) The rules relating to 2009 extension, including the right to elect to pay premiums retroactively and maintain coverage under this section or s. 632.897, Stats.

(b) The rules relating to notification as provided under section 1010 (c) of he federal department of defense appropriation act, 2010 (H.R. 3326).

**SECTION 3.** This section may be enforced under ss. 601.41, 601.64, 601.65, 628.10, Stats., or ch. 645, Stats., or any other enforcement provision of chs. 600 to 646, Stats.

**SECTION 4.** These emergency rule changes will take effect on the day after publication, as provided in s. 227.24(1)(c), Stats.

Dated at Madison, Wisconsin, this 30<sup>th</sup> day of December, 2009.

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Kimberly A. Shaul  
Deputy Commissioner of Insurance

**Office of the Commissioner of Insurance  
Private Sector Fiscal Analysis**

for Section Ins 3.75 (2) (c) and (8) relating to continuation of group insurance policies and affecting  
small business

This rule change will have no significant negative effect on the private sector regulated by OCI but will allow numerous people to continue group health insurance that would not be able to without this change.

FISCAL ESTIMATE WORKSHEET  
Detailed Estimate of Annual Fiscal Effect

ORIGINAL       UPDATED  
  
 CORRECTED       SUPPLEMENTAL

LRB Number	Amendment No. if Applicable
Bill Number	Administrative Rule Number <b>INS 3.75</b>

**Subject**  
continuation of group insurance policies and affecting small business

**One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**

Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
<b>A. State Costs by Category</b>		
State Operations - Salaries and Fringes	\$ 0	\$ -0
(FTE Position Changes)	(0 FTE)	(-0 FTE)
State Operations - Other Costs	0	-0
Local Assistance	0	-0
Aids to Individuals or Organizations	0	-0
<b>TOTAL State Costs by Category</b>	<b>\$ 0</b>	<b>\$ -0</b>
<b>B. State Costs by Source of Funds</b>	<b>Increased Costs</b>	<b>Decreased Costs</b>
GPR	\$ 0	\$ -0
FED	0	-0
PRO/PRS	0	-0
SEG/SEG-S	0	-0
<b>C.</b>	<b>Increased Rev.</b>	<b>Decreased Rev.</b>
GPR Taxes	\$ 0	\$ -0

	<b>0</b>	<b>-0</b>
	<b>0</b>	<b>-0</b>
	<b>0</b>	<b>-0</b>
	<b>0</b>	<b>-0</b>
	<b>\$ 0 None</b>	<b>\$ -0 None</b>

**NET ANNUALIZED FISCAL IMPACT**

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ <u>None 0</u>	\$ <u>None 0</u>
NET CHANGE IN REVENUES	\$ <u>None 0</u>	\$ <u>None 0</u>

<b>Prepared by:</b> Robert Luck	<b>Telephone No.</b> (608) 266-0082	<b>Agency</b> Insurance
<b>Authorized Signature:</b>	<b>Telephone No.</b> (608) 267-3782	<b>Date (mm/dd/ccyy)</b> 12/30/2009

FISCAL ESTIMATE

- ORIGINAL       UPDATED  
  
 CORRECTED       SUPPLEMENTAL

LRB Number	Amendment No. if Applicable
Bill Number	Administrative Rule Number <b>INS 3.75</b>

**Subject**

continuation of group insurance policies and affecting small business

**Fiscal Effect**

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation       Increase Existing Revenues  
 Decrease Existing Appropriation       Decrease Existing Revenues  
 Create New Appropriation

- Increase Costs - May be possible to Absorb  
    Within Agency's Budget     Yes  
 No  
  
 Decrease Costs

Local:  No local government costs

- |   |   |  |
|---|---|--|
| <p>1. <input type="checkbox"/> Increase Costs</p> <p style="padding-left: 20px;"><input type="checkbox"/> Permissive    <input type="checkbox"/> Mandatory</p> <p>2. <input type="checkbox"/> Decrease Costs</p> <p style="padding-left: 20px;"><input type="checkbox"/> Permissive    <input type="checkbox"/> Mandatory</p> | <p>3. <input type="checkbox"/> Increase Revenues</p> <p style="padding-left: 20px;"><input type="checkbox"/> Permissive    <input type="checkbox"/> Mandatory</p> <p>4. <input type="checkbox"/> Decrease Revenues</p> <p style="padding-left: 20px;"><input type="checkbox"/> Permissive    <input type="checkbox"/> Mandatory</p> | <p>5. Types of Local Governmental Units Affected:</p> <p><input type="checkbox"/> Towns    <input type="checkbox"/> Villages    <input type="checkbox"/> Cities</p> <p><input type="checkbox"/> Counties    <input type="checkbox"/> Others _____</p> <p><input type="checkbox"/> School Districts</p> |
|---|---|--|

Fund Sources Affected

- GPR     FED     PRO     PRS     SEG  
 SEG-S

Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

**Long-Range Fiscal Implications**

None

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